

In view of the unavailability of Rathi as a reference, the rejection under 35 U.S.C. 103(a) is moot. However, even if Rathi was available as a reference, the combination of Bromberg and Rathi still would not have rendered the claimed invention to be obvious at the time it was made.

The burden is on the Examiner to establish a case of *prima facie* obviousness. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). In order to do this by combining references, the prior art must provide some reason or motivation to make the claimed compositions, *In re Dillon*, 16 U.S.P.Q.2d 1897, 1901 (Fed. Cir. 1990) (en banc). When making a rejection under 35 U.S.C. § 103 there are three fundamental areas the Examiner is required, under 37 C.F.R. § 1.106 and MPEP § 706.02, to cover. First, the rejection should set forth the differences between the claims and the prior art. Second, the proposed modification of the applied references necessary to arrive at the claimed subject matter should be clearly stated. Third, there must be an explanation as to why such proposed modifications would be obvious.

In the rejections entered by the Examiner under § 103, there is a common flaw which cannot be resolved simply by the Examiner making an allegation that "it would be obvious". There must be some reason, suggestion or motivation in the art cited to combine the references in the manner stated by the Examiner. Were it not for first having read the Applicants' disclosure and then by hindsight application attempting to piece together portions of each reference rather than considering each reference for what it teaches as a whole, it is not believed a rejection would have been entered. With the above background in mind the rejection under 35 U.S.C. § 103 will be discussed.

The present invention provides drug delivery systems that are biodegradable, exhibit improved reverse thermal gelation behavior, and provide improved drug release characteristics.

The drug delivery systems of the present invention are biodegradable polymeric systems possessing reverse thermal gelation properties comprising a mixture of at least a Component I triblock copolymer and a Component II triblock copolymer, said triblock copolymers comprising

biodegradable polyester A-polymer blocks and polyethylene glycol B-polymer blocks, wherein the B-polymer block of said Component I triblock copolymer has an average molecular weight of 900 to 2000 Daltons and the B-polymer block of said Component II triblock copolymer has an average molecular weight of 600 to 2000 Daltons, and wherein said Component I triblock copolymer has an average molecular weight of between 2500 to 8000 Daltons and said component II triblock copolymer has an average molecular weight of between 800-7200 Daltons.

In Blomberg, one or more responsive components may be used with a structural component such as polyacrylic acid. First of all, the response polymers of Blomberg are completely different from the biodegradable triblock copolymers as claimed in the present invention. In Blomberg, it is disclosed that one block of the triblock composition has a molecular weight of 3250 and another block of the triblock composition has a molecular weight of over 5700. However, these polymers was used individually with a structural component such as polyacrylic acid. Nothing in Blomberg teaches or suggests mixtures of triblock copolymers with improved properties as claimed in the present invention.

Therefore, in view of the above, it is believed that the Examiner has failed to established a case of *prima facie* obviousness. In other words, one of ordinary skill in the art when combining all the knowledge and methods disclosed in the cited prior art, at the time of the invention was made, would not come up with the triblock copolymer mixtures as claimed in the present invention. Thus, the Examiner is respectfully requested to withdraw the rejections of Claims 1-13 as being unpatentable over the cited references.

In conclusion, the present invention is patentable over all the references cited in the Examiner's rejection. Therefore, it is respectfully submitted that all the rejections be withdrawn and that all pending claims be allowed and this application be passed to issue.

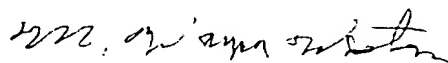
If any impediment to the allowance of these claims remains, the Examiner is invited to call Dr. Weili Cheng, who is an attorney of record at (801) 566-6633, or in her absence, the

undersigned at the same number, so that such matters may be resolved as expeditiously as possible.

The Commissioner is hereby authorized to charge any additional fee or to credit any overpayment in connection with this Amendment to Deposit Account No. 20-0100.

DATED this 11th day of July, 2002.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "M. Wayne Western", is written above the typed name.

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